

Message Text

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PAGE 01 NAIROB 14287 201433Z
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C O N F I D E N T I A L NAIROBI 14287

E. O. 11652: GDS
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SUBJ: CONSULTATIONS ON LOS

REF: STATE 298001 (NOTAL)

1. FULLY CONCUR IN REFTEL APPRAISAL OF KENYA AS KEY COUNTRY FOR LOS CONFERENCE. KENYA'S INFLUENCE IS LARGELY A FUNCTION OF EXPERTISE OF ITS LOS DELEGATION, IN THE PERSON OF MFA CHIEF OF LEGAL DIVISION FRANK NJENGA (AND PREVIOUSLY, HIS DEPUTY ANDRONICUS ADEDE WHO IS NOW EMPLOYED BY UN SECRETARIAT AND IS ASSIGNED TO SECRETARIAT OF LOS CONFERENCE). IN ORDER OBTAIN CURRENT READING ON QUESTIONS RAISED PARA 3 REFTEL, POL COUNSELOR CALLED ON NJENGA DEC 20 FOR TOUR D'HORIZON OF INTER-SESSIONAL LOS ACTIVITIES.

2. DISCUSSION WAS PEGGED TO OCT 1 UNGA SPEECH BY FOREIGN MINISTER WAIYAKI, WHICH CONTAINS AUTHORITATIVE STATEMENT
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PAGE 02 NAIROB 14287 201433Z

OF KENYA POSITION ON LOS AT END OF LAST SESSION (ASSUME DEPT HAS TEXT). NJENGA CONFIRMED THAT TWO PRIMARY ISSUES OF CONCERN TO KENYA IN MAY 1977 SESSION ARE DEFINITION OF MACHINERY FOR EXPLOITATION OF SEABED, INCLUDING PROPOSED ENTERPRISE, AND CLARIFICATION OF LEGAL STATUS OF THE 200-MILE ECONOMIC ZONE. NJENGA INDICATED THAT BEGINNING OF A COMPROMISE ON SEABED EXPLOITATION WAS CONTAINED IN SECRETARY

KISSINGER'S PROPOSALS TO LAST SESSION OF LOS CONFERENCE, BUT DEVELOPING COUNTRIES NEEDED MORE DETAILS OF U.S. POSITION IN ORDER TO DETERMINE THEIR POSITION FOR NEXT SESSION. WITH RESPECT TO ECONOMIC ZONE, NJENGA SAID KENYA'S VIEW THAT EZ SHOULD BE SUI GENERIS WAS WELL KNOWN TO U.S., AND THIS POSITION COMMANDED CONSIDERABLE SUPPORT AMONG LDC'S. HE ARGUED THAT ELABORATION OF PERMITTED ACTIVITIES IN EZ WOULD ASSURE FREEDOM OF NAVIGATION AND SCIENTIFIC RESEARCH, BUT AT SAME TIME WOULD STRENGTHEN REAL CONTROL OF "WEAK" COASTAL STATES OVER OTHER ACTIVITIES IN ADJACENT WATERS. IN THIS CONNECTION, HE CITED KENYA'S WISH TO HAVE MAXIMUM LEGAL BASIS FOR DEALING WITH RUSSIANS OFF KENYA'S COAST, RECOGNIZING THAT USSR HAS MAJOR MARTIME FACILITIES IN SOMALIA.

3. NJENGA SAID KENYA'S INTERSESSIONAL PREPARATIONS FOR RESUMPTION OF LOS CONFERENCE WOULD BE GEARED TO MEETING OF AFRICAN STATES IN LAGOS, TENTATIVELY SCHEDULED FOR SECOND PART OF MARCH. THIS MEETING WOULD BE AT INVITATION OF NIGERIAN GOVERNMENT, WITH A LOOSE LINK TO OAU. THEREAFTER, KENYA WOULD ATTEND PRE-SESSION MEETING IN GENEVA OF "EVENSEN COMMITTEE."

4. IN RESPONSE TO QUESTION ON HIS FUTURE LOS ROLE, NJENGA MADE IT CLEAR THAT HE INTENDED TO CONTINUE AS PRINCIPAL FIGURE IN GOK LOS ACTIVITIES DESPITE HIS RECENT ELECTION TO INTERNATIONAL LAW COMMISSION. UNFORTUNATELY, ILC IS EXPECTED TO MEET IN GENEVA FOR ABOUT 12 WEEKS BEGINNING IN MAY, I.E., PRECISELY THE PERIOD WHEN LOS CONFERENCE WILL BE RECONVENING IN NEW YORK. NJENGA INTENDS TO TAKE 3-4
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PAGE 03 NAIROB 14287 201433Z

WEEKS OFF FROM ILC IN ORDER PARTICIPATE IN LOS CONFERENCE. IT REMAINS TO BE SEEN WHETHER THIS DIVIDED ATTENTION WILL REDUCE HIS INFLUENCE AT CONFERENCE; HOWEVER, IT IS LIKELY THAT HE WILL STILL BE INSTRUMENTAL IN DETERMINING KENYA POSITIONS.

5. ACCORDING TO NJENGA, KENYAN LOS DELEGATION IS GIVEN WIDE LATITUDE IN DETERMINING POSITIONS ON ISSUES BEFORE THE CONFERENCE. ALTHOUGH UN PERMREP MAINA IS NOMINAL HEAD OF LOS DELEGATION AND IS REGULARLY BRIEFED BY DELEGATION, MAINA PLAYS LITTLE OR NO SUBSTANTIVE ROLE. OTHER GOK ENTITIES REPRESENTED IN LOS DELEGATION ARE MINISTRY OF DEFENSE (DEPUTY SECRETARY PHILIP GITONGA) AND NATIONAL ENVIRONMENT SECRETARIAT (MBOTEL. IN NJENGA'S OPINION, THERE ARE NO SUBSTANTIVE DIFFERENCES AMONG MEMBERS OF GOK DELEGATION, WHICH HE WRONGLY NOTED IN A CONTRAST TO DELEGATIONS OF OTHER COUNTRIES.

6. WHILE THERE IS INPUT FROM VARIOUS GOK AGENCIES, FINAL DECISIONS ON LOS ARE TAKEN BY FOREIGN MINISTER WAIYAKI AND/

OR PERMANENT SECRETARY OF MFA, AMB. LEONARD KIBINGE. NJENGA GAVE IMPRESSION THAT WAIYAKI GENERALLY ACCEPTS POSITIONS FAVORED BY DELEGATION, AND THAT OTHER INFLUENCES FROM ACADEMIC OR BUSINESS CIRCLES ARE MINIMAL.

7. WE DID NOT RAISE WITH NJENGA THE QUESTION OF LINK BETWEEN LOS ISSUES AND BILATERAL MATTERS. IN EMBASSY'S VIEW, U.S. STANCE ON AFRICA ISSUES IN UN AND ON MATTERS OF PAROCHIAL INTEREST TO KENYA SUCH AS LOCUS OF UN HUMAN SETTLEMENTS APPARATUS COULD HAVE IMPACT ON GOK WILLINGNESS TO ACCOMMODATE OUR LOS INTERESTS. HOWEVER, THERE IS NO DIRECT TRADEOFF INVOLVED, AND WE DOUBT THAT EVEN COMPLETE U.S. BACKING FOR KENYA ON SUCH ISSUES WOULD SUBSTANTIALLY ALTER KENYA'S LOS POSITIONS. SIMILARLY, THE GROWING CLOSENESS OF U.S.-KENYA RELATIONS IN SPHERE OF NATIONAL AND REGIONAL SECURITY CANNOT EASILY BE TRANSLATED INTO CONGRUENCE OF POSITIONS IN LOS
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PAGE 04 NAIROB 14287 201433Z

MATTERS.

8. NJENGA EXPRESSED KEEN INTEREST IN TREND OF U.S. THINKING ON SPECIFICS OF SEABED EXPLOITATION REGIME, IMPLICATION BEING THAT LDC'S NEED SOMETHING CONCRETE TO REACT TO. HE ALSO WONDERED WHETHER U.S. LOS DELEGATION WOULD CONTINUE TO BE HEADED BY AMB. LEARSON. WE ASSURED HIM OF CONTINUITY OF U.S. INTERESTS IN LOS TREATY AND SAID WE WOULD KEEP HIM INFORMED ON ANY NEW DEVELOPMENTS.

9. CONVERSATION WITH NJENGA AND WHAT WE KNOW OF KENYA DELEGATION PERFORMANCE AT LOS CONFERENCE SUGGESTS DESIRABILITY OF CONTINUED EFFORTS TO CULTIVATE NJENGA, WITH A POSSIBLE HIGH-LEVEL APPROACH TO WAIYAKI WHEN WE HAVE A DEFINITE POSITION TO ADVOCATE FOR NEXT LOS SESSION. SUCH AN APPROACH COULD BE MADE EITHER BY AMBASSADOR OR BY SENIOR U.S. OFFICIAL. EXPERIENCE HERE WITH MESSAGES TO PRESIDENT KENYATTA IS THAT SUCH COMMUNICATIONS TEND TO FALL BETWEEN STOOLS IN THE BUREAUCRACY, AND KENYATTA HIMSELF DOES NOT BECOME PERSONALLY INVOLVED IN DETAILS OF INTERNATIONAL NEGOTIATIONS.
MARSHALL

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